

MINUTES OF DECEMBER 1, 2014

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 1, 2014, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members, Mr. Lawrence Lank – Director of Planning and Zoning, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Finding of Facts for October 6, 2014 as circulated. Motion carried 4 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted the procedures for hearing the cases.

PUBLIC HEARINGS

Case No. 11476 – Donald E. Radcliffe & Karen A. Radcliffe – northeast of Road 298 (Legion Road) and being southeast corner of Joanne Drive and Stacey Drive and being Lot 34 within John Burton Manor Subdivision (911 Address: 220 Joanne Drive, Millsboro, DE) (Tax Map I.D. 2-34-29.00-863.00)

An application for a special use exception for a recovery home.

Mr. Lank presented the case and stated that the Office of Planning and Zoning received twenty-seven (27) letters in support of the Application and received six (6) letters in opposition to the Application and gave each Board member copies of all letters submitted.

Donald Radcliffe, William Garnett, and Robert Buckley were sworn in and testified requesting a special use exception for a recovery home.

Mr. Radcliffe testified that he is the owner of the Property and that Midway Baptist Church leases the Property from him.

Mr. Garnett testified he is the director of the recovery house; that the use is not a commercial business, nursing home, or substance abuse center; that no health care or treatment is provided on the site; that there is not a health care provider or supervisor on site; that residents manage the Property and the finances; that the program is not a halfway house; that there is no extra traffic impact on the neighborhood; that there are no large deliveries or large volumes of traffic accessing the Property; that volunteers offer rides to the residents in need of transportation; that a few residents are on probation and have probation officers visit the home; that police have

not been called to the residence since the recovery home has been in operation; that approximately a year and a half ago the church leased the Property for this use; that the residence offers a drug and alcohol free home for men in recovery; and that the use will not substantially adversely affect the use of the neighboring and adjacent properties.

Robert Buckley testified that the recovery home is functionally equivalent to the "Oxford House"; that the home is run in a democratic manner by the residents; that the Property is zoned for single family housing; that the success of recovery increases in a residential setting; that the home functions as a family environment; that all residents have access to the entire dwelling; that the residents share equal expenses and housekeeping duties while living in the home; that there is no limit on how long a resident may remain in the home; that this type of home is the functional equivalent to a single family dwelling and should be in an area for single family homes; that in 1988 the Federal Fair Housing Amendment Act ("FHAA") was passed and Congress determined it unlawful to discriminate against the handicapped and disabled; that the Congress pre-empted state and local law with FHAA to end the unnecessary exclusion of persons with handicaps from society; that a handicap is a physical or mental impairment which substantially limits one or more daily living activities; that addiction to alcohol, legal or illegal substances falls within the definition of handicap; that it is unlawful to refuse their rights to reasonable accommodations in rules, policies, or practices when such accommodations may be necessary; that the residents of the recovery home have special needs and are a protected class according to the FHAA; that it is not unreasonable to request a special use exception to allow six (6) or seven (7) unrelated adults to live in the same residence; that there have been several court cases to support this use; and that baseless hostility and fear are not reasons to deny this type of use.

Mr. Radcliffe testified that there was a death due to an overdose in a neighboring home, but not at this property.

Mr. Buckley testified that the residents of the home are a good group of sober men rebuilding their lives; and that the residents are back in the workforce and getting involved with their families again.

Mr. Lank advised the Board that a family, as defined by the Sussex County Code, includes up to four (4) unrelated persons.

Mr. Radcliffe testified that his son previously lived in the home; and that he was not aware a special use exception was required until he was contacted by the Planning and Zoning Department.

Mr. Buckley testified that the home is open for six (6) residents; and that residents are immediately expelled if they use drugs or alcohol.

Mr. Radcliffe testified that the program is overseen by the Midway Baptist Church and their representatives visit the home daily; that he lives 100 feet away from the Property; and that the residents are randomly drug tested by their probation officers and the Church.

Mr. Buckley testified that volunteers stop by the house regularly as well; that the home is only open to men in recovery; that there are no females or children living in the home; they need at least six (6) men living in the home to keep it in operation; that the Applicant seeks a reasonable accommodation to allow six (6) men to live in the home; that there are homes throughout Sussex County which house more than six (6) persons; that the use will not substantially adversely affect the neighboring and adjacent properties; that the house is power washed regularly and the grass is cut; and that there is no loud noise emanating from the home at night.

Mr. Radcliffe testified that the program is total voluntary and not funded by any State or Federal grants; and that he has the ultimate control of the Property.

Mr. Buckley testified that there are Alcoholics Anonymous meetings held at the house a few times per week; that not all residents are on probation; that each resident pays \$110.00 per week to cover expenses equally; that non-residents are at the house approximately three (3) times per day; that there are evening meetings throughout the week; that there is a general curfew of 10:00 p.m., unless a resident is working; that one of the residents has a vehicle; that there is no more traffic than is for a single-family residence; that the Applicant seeks approval for six (6) residents; and that the dwelling is a three (3) bedroom, two (2) bath structure.

Mr. Radcliffe testified that there had been no complaints from the neighborhood until he received a letter from Ruth Briggs King; that he has owned the his house for thirty-six (36) years; that his son has been out of the Property for approximately eleven (11) to twelve (12) months; that the Property is serviced by a septic system; that there is not an issue with the septic system with six (6) residents; that the program is not licensed by the State of Delaware; and that there is no signage on the door to the house.

Mr. Buckley testified that over the past year and half they have helped approximately fifteen (15) to twenty (20) men; that the residents are self-regulating because they do not want to go back to jail; that all residents are recovering addicts; that once an addict uses the substance again, he is no longer considered disabled; that the house is only for those persons who are in recovery and that they will be evicted if caught using; that the Midway Baptist Church is on the lease and that the residents deal with the Church; and that Mr. Garnett is the representative for the Church.

Ryan Gibbs was sworn in and testified in support of the Application and testified that he is a resident of the home; that he is a recovering addict; that the residents consider each other as family; that the home provides a structured lifestyle and gives him an opportunity to better himself; that his family turned his back on him so it was difficult to find a place to live; that probation

officers regularly visit the house; that Mr. Buckley and Mr. Garnett visit the home daily; that he attends Alcoholics Anonymous meetings seven (7) days a week; that there is not much traffic to the house; that they do not tolerate any substance abuse; that anyone who violates the rule are immediately removed from the home; that men aged 23-40 live in the house; and that the residents are trying to become productive members of society.

Robert John was sworn in and testified in support of the Application and testified that he is a Board member of Midway Baptist Church; that Mr. Garnett reports monthly to the church board; and that the church has a fund to supplement the expenses of the house if there are not six (6) residents living there.

Pastor James Noland was sworn in and testified in support of the Application and testified that he is the pastor of Axeford Community Church; that his church is across the street from the Property; that his son is a recovering heroin addict; that a recovery house helped his son get his life back on track; that a recovery home gives an addict a new start away from their old environment; and that his church holds bible studies with the residents of the home.

Pastor Gary Hayden was sworn in and testified in support of the Application and testified that he is the pastor of Midway Baptist Church; that the church has run other recovery homes; that there is a one (1) strike rule; and that it is not their intention to disrupt the community.

Ernest Bradley was sworn in and testified in opposition to the Application and testified that he has lived in the development since 1997; that the restrictive covenants state the development was approved for single-family dwellings only; that the Homeowners Association no longer exists; that he questions the non-profit status of the house; that he questions who is responsible for the Property; that there has been trouble at this house in the past; that, in his opinion, the recovery house will adversely affect property values; and that homes have been purchased recently by persons who were unaware of the recovery house. Mr. Bradley submitted a copy of the restrictive covenants for the record.

Elizabeth Shepherd was sworn in and testified in opposition to the Application and testified that she lives in the development and is a member of the American Legion and Indian River Fire Company Ladies' Auxiliary; that she was once told that nine (9) men live in the house; that other properties have been sold recently but the owners said that they would not have moved into the neighborhood had they known about the recovery house; that she contacted Ruth Briggs King in reference to the use of the home; that there have been properties for sale and not selling due to the recovery house and a house on Legion Road; that the house on Legion Road has been a crack house; that people would go back and forth from the house on Legion Road to the Property; that there was an overdose at the Property approximately six (6) months ago; that she wants to feel safe in her community; that there have been numerous burglaries in the neighborhood for the past six (6) months; that she feels the Applicant was sneaky when setting up the recovery home; that she drives around the neighborhood multiple times per day; that she would like to know if they keep

a log of residents; that she does not feel safe; that one resident of the recovery house goes back and forth to a neighboring house; and that she cannot say how it will substantially adversely affect the neighborhood.

Kenneth West was sworn in and testified in opposition to the Application and testified that he lives across the cul-de-sac from the Property; that he has seen women at the house on multiple occasions; that he moved to the development in August 2014; that there have been numerous law enforcement officers at the house; that there has been a drug overdose in the house; that he has seen alcohol being consumed and brought into the house; that there is a lot of traffic to and from the Property; that he believes that property values will drop; and that there are a lot of new people buying property and are unaware of the recovery house.

Catherine Spare was sworn in and testified in opposition to the Application and testified that she moved to the development in September 2014; that she was not aware of the recovery house in the development at that time; that there is a lot of foot traffic to and from the recovery house; that there is a path on a vacant lot near her property that leads to the nearby shopping center; that she has seen residents of the recovery home drinking alcohol in the woods nearby; that she has found empty beer cans in the nearby woods; that she no longer feels safe to let her child play outside; that there has been increased traffic due to the house; that she feels the house is bad for the community; that she has also smelled "weed" in the area; and that she feels the use substantially adversely affects the neighboring and adjacent properties.

Joe Farinski was sworn in and testified in opposition to the Application and testified that there is a fence that separates the adjacent townhouses; and that there is a hole in the fence and it is used to gain access between the two developments.

Ms. Shepherd testified that she handed out copies of the notice of public hearing to the neighborhood; and that Ms. Spare was not aware of the recovery house until she received a copy of the public notice.

Lenny Woolridge was sworn in and testified in opposition to the Application and testified that he moved to the development three (3) months ago; that he noticed a lot of activity at the cul-de-sac; that there is a great amount of foot traffic on the pathway near neighboring townhouses; that cars sit for long periods of time in the cul-de-sac; that he feels the area is not safe; that he fears for the safety of children in the neighborhood; and that the use will substantially adversely affect the neighboring and adjacent properties.

Mr. Farinski testified that there has been drug activity at this property in the past; that there is a drug house nearby; that he would like clarification of exactly what type of house this is; that he is an addiction counselor; that there should be supervision in the house; that the Property has been a thorn in his side in the past; that he has lived in the development since 2004; and that he has not had any problems with the current residents.

Sheila Vaivoda was sworn in and testified in opposition to the Application and testified that she lives approximately 300 feet from the Applicants' property; that seven (7) days a week from 4:15 p.m. to 10:15 p.m. there are cars in and out from the Property; that there is a lot of foot traffic that uses the well-worn path in the common area not just from residents of the recovery house, but also from children in the neighborhood; that the path leads to the nearby shopping center; that she moved to the development in July 2014; and that she would not have moved here had she known about the recovery house.

Ms. Shepherd testified that she wants to know who is benefitting from the recovery home; and that she only sees two (2) residents from the Property and the others in attendance and supporting the Application do not live in the development.

Catherine Winebrake was sworn in and testified in opposition to the Application and testified that she has lived in the development since 2009; that she believed the use had already been approved; that she has seen strange activities around the home; that there have been medics and police called to the Property; that there was trash strewn across the back yard of the Property; that the residents walk through other people's yards; that she has seen drinking and women at the house; that there have been some burglaries in the area but she cannot say for sure it was anyone from the house; that she is disappointed that they did not contact the neighborhood prior to opening the recovery house; and that she does not think the use should be approved.

The Board took a ten (10) minute recess.

In rebuttal, Mr. Buckley testified that there is one resident who has a sister that provides him transportation; that there are no women in or occasionally visiting the house; that a sister of a resident transported her brother to the house and came into the residence to look around; that the residents police themselves and hold each other accountable; that there are some residents with a felony record due to drug or alcohol arrests; that the courts require drug testing for some residents three (3) times a week; that the others are tested every week or so; that any resident using drug or alcohol is immediately evicted from the Property; that some residents have failed their tests and been evicted; that the nearby path leads to a bus stop and a shopping center; that the path is also used frequently by children in the neighborhood; that the American Legion is located nearby and it serves alcohol; that the direct adjacent neighbors have no objection to the Application; that the four (4) core residents have been sober; that he offered to have a neighborhood BBQ to allow the other property owners a chance to meet the current residents; that there is a crack house down the street; and that there was a drug overdose at another house in the area.

Mr. Radcliffe testified that there have been no police calls made from or about the Property since the recovery house has been in operation; and that his daughter-in-law died from an overdose in July 2013 but she was not living in the house at the time.

Mr. Buckley testified that when a resident wants to start using drugs and alcohol, he typically leaves the house voluntarily; that they rarely have to evict anyone from the Property; that he has never seen more than three (3) cars at the Property at one time; that there are no more cars on the Property than would be on a property used as a single-family house; that the recovery house gives the residents hope; that residents must be sober for thirty (30) days prior to living in the home, or come straight from a treatment facility; that all residents are diagnosed with substance abuse issues; that any resident who relapses is immediately removed from the Property, taken to a bus stop, and sent to a shelter; that one tenant recently left and is doing very well; that four residents have been sober from five (5) months to a year; that they about ten (10) residents have relapsed over the past year; that another five (5) residents left voluntarily to relapse; and that the program is generally in the negative and receives loans from the church to cover the finances.

Mr. Radcliffe testified he owns two (2) lots in the development and lives on an adjacent Property at the entrance of the development; that he cares for seven (7) children at his home, three (3) of the children are his own and four (4) are his grandchildren; that their ages range from one (1) to eighteen (18); that his children play outside and use the pathway; and that he does not fear for their safety.

Mr. Farinski testified that the neighbors should have been notified prior to the recovery house being put into place; that he saw three (3) probation officers on the Property; that he questions the legitimacy of the program; and that you do not get a chance to know a transient population.

Mr. Buckley testified that they were not aware of the need for a special use exception which was why this application was not filed earlier.

The Board found that sixteen (16) parties appeared in support of the Application.

The Board found that fourteen (14) parties appeared in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the case be **tabled until December 15, 2014**. Motion carried 4 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11493 – Sharon Kulp – north of Road 298 (Banks Road) and being southeast of Blue Boulevard 1,390 feet north of Road 298 (Banks Road) and being Lot L 13 in Shawn's Hideaway a Mobile Home Park (911 Address: 24439 Blue Boulevard, Millsboro, DE) (Tax Map I.D. 2-34-17.00-166.00-Unit 54900)

An application for a variance from the separation requirement between units in a mobile home park.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Mr. Sharp advised the Board that his firm has represented the Applicant in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

John Starck was sworn in and testified requesting a variance of 0.3 feet from the twenty (20) feet separation requirement between units in a mobile home park; that he is the construction manager for Atlantis Homes; that the manufactured home was placed on the Property but is four (4) inches too close to the neighboring manufactured home; that, prior to the installation of the footers for the home, they consulted with the mobile home park manager and the mobile home park manager approved the placement of the manufactured home; that the Planning and Zoning Department later advised them of the encroachment; that the septic system is in the rear yard; that they want to keep some distance between the house and the septic tank; that the steps will be turned so as not to encroach into the setback areas; that the home is consistent with other homes in the neighborhood; that the unit is sixteen (16) feet wide; that the variance will not alter the character of the neighborhood; that the variance will not affect the neighboring and adjacent properties; and that the variance requested is the minimum variance to afford relief.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11493 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The location of the septic system and small size of the lot make the Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance to afford relief.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11494 – Edward J. Sattler and Mary Ann Sattler – southeast of Road 351 (Clubhouse Road) and being south of Hickman Drive 250 feet west of Bridge Lane and being Lot 3 Block B Section 1 of White's Creek Manor Subdivision (911 Address: 758 Hickman Drive, Ocean View, DE) (Tax Map I.D. 1-34-12.00-894.00)

An application for a variance from the rear yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Edward Sattler was sworn in to testify about the Application. Manaen Robinson, Esquire, presented the case to the Board on behalf of the Applicants.

Mr. Robinson stated that the Applicants are requesting a variance of 0.3 feet from the ten (10) feet rear yard setback requirement for an existing dwelling; that the Applicants purchased the Property on September 24, 2014; that a survey completed for settlement showed the encroachment into the rear yard setback; that the dwelling was built in the mid-1980s; that the Certificate of Compliance was issued in 1985; that a portion of the dwelling would have to be removed to comply with the Zoning Code; that the variance is necessary to enable reasonable use of the Property; that the violation was not created by the Applicants; that the dwelling has been in its present location for 30 years; that the variance will not alter the character of the neighborhood; and that the variance requested is the minimum variance to afford relief.

Mr. Sattler, under oath, confirmed the statements made by Mr. Robinson.

The Board found that two (2) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11494 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The existing dwelling and Certificate of Compliance create a unique situation;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not have an adverse effect on neighboring and adjacent properties;
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

OTHER BUSINESS

2015 Public Hearing Calendar

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the 2015 Public Hearing calendar by changing the date of the meeting scheduled for September 7, 2015 to September 14, 2015. Motion carried 4 – 0.

Meeting Adjourned 10:17 p.m.